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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 547

THOMAS J. KEHOE, also known as THOMAS KEHOE,
Petitioner

v.

CHARLES C. BOYLE, Executor of the Last Will and Testament of MICHAEL KEHOE, also known as M. E. KEHOE, ET AL., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE COMMON PLEAS COURT OF HAMILTON COUNTY, OHIO

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

THOMAS J. KEHOE, also known as THOMAS KEHOE,
Petitioner

v.

CHARLES C. BOYLE, Executor of the Last Will and Testament of MICHAEL KEHOE, also known as M. E. KEHOE;

REVEREND WILLIAM SHAW, 511 South Monroe Street, Monroe, Michigan;

ST. EDWARDS CATHOLIC CEMETERY, Cynthiana, Harrison County, State of Kentucky;

ST. TERESA CHURCH, Overlook and Glenway Avenues Cincinnati, Ohio;

ST. EDWARDS CHURCH, Cynthiana, Harrison County, State of Kentucky;

LITTLE SISTERS OF THE POOR, Riddle Road, 476 Riddle Road, Cincinnati 20, Ohio;

ST. VINCENT DEPAUL CONFERENCE of St. Teresa Church, Overlook and Glenway Avenues, Cincinnati, Ohio;

LITTLE SISTERS OF THE POOR, Florence Avenue, 2024 Florence Avenue, Cincinnati, Ohio;

THE UNKNOWN HEIRS, DEVISEES, LEGATEES, EXECUTORS, ADMINISTRATORS AND ASSIGNS OF MICHAEL E. KEHOE, also known as M. E. KEHOE, whose names and places of residence are unknown;

KARL J. ALTER, Archbishop of Cincinnati, Trustee for the use and benefit of the Little Sisters of the Poor of Florence Avenue; Little Sisters of the Poor of Riddle Road; St. Vincent DePaul Conference of St. Teresa Church, Cincinnati, Ohio; St. Teresa Chrach, Overlook and Glenway Avenue, Cincinnati, Ohio;

MOST REVEREND RICHARD ACKERMAN, S.T.D., Roman Catholic Bishop of the Diocese of Covington, Kentucky and his successors in office for the use and benefit of St. Edwards Church, Cynthiana, Kentucky and St. Edwards Catholic Cemetery, Cynthiana, Kentucky, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE COMMON PLEAS COURT OF HAMILTON COUNTY, OHIO

This is a Petition for Writ of Certiorari to the Common Pleas Court of Hamilton County, Cincinnati, Ohio, which on August 19, 1963 entered a judgment pursuant to jury verdict for the defendants-appellees against the plaintiff-appellant.

OPINIONS BELOW

The opinions of the courts below appear in the appendix, together the APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI, followed by the ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether public policy does not require the Court's careful scrutiny of an alleged Will, which bequeathes 80 per cent of a modest estate to the institutions and officials of the Roman Catholic Church, with only 5 per cent to the deceased's only legal heir.

Whether the Court of Common Pleas, Hamilton County, Ohio was in error in ruling that there was no evidence of undue influence and thus preventing the jury from evaluating the value of the evidence in support thereof.

Whether in holding that the testator had the mental capacity to execute the unnatural Will in question was not such gross error as to set aside the purported Will.

Whether the Court of Common Pleas, Hamilton County, Ohio was not in error in admitting to evidence the letter of September 19, 1959, addressed by the petitioner to his uncle as wrongfully indicating petitioner's belief in his uncle's mental capacity.

Whether the heirship chart (Proponent's Exhibit #7) was not fraudulently introduced during the trial before the Common Pleas Court of Hamilton County, Ohio.

STATEMENT OF THE CASE

The purported Will drawn up for my uncle, Michael E. Kehoe, on August 19, 1959, five months before his 86th birthday, is the question at issue. This instrument was prepared by one Charles C. Boyle, an attorney at law in Hamilton County, Cincinnati, Ohio, and he and his wife, Alvina T. Boyle, were the subscribing witnesses.

My uncle was a decrepit, feeble and senile man and a religious fanatic, who felt that he had to buy his way to heaven. Testimony will show that the financial adviser of the Kehoe family for many years, Frank J. Altenau, consulted with Michael E. Kehoe shortly after the death of his sister, Phoebe, during the months of May and June, 1959, at which time he stated he wished to make a new Will. Mr. Altenau stated unequivocally that, at those times, and on August 19, 1959, Michael E. Kehoe did not possess sufficient mental capacity to form the purpose and intent to make a Will (Bill of Exceptions, pages 81 to 86). However, three months later, he did execute a Will under the direction of Charles C. Boyle. After the execution of the paper writing in question, the Petitioner and his wife, Rose, who had been in close association with the family throughout the years, testified that in December, 1959, they had visited with Michael E. Kehoe for several days and were alarmed at his physical and mental deterioration, and that, in their opinion, on December 28, 1959, and for many months prior thereto, Michael E. Kehoe, did not possess sufficient mental capacity to form the purpose and intent to make a Will.

It is significant that each and every fact adduced on behalf of Contestant, bearing upon the question whether on August 19, 1959, Michael E. Kehoe possessed sufficient mental capacity to form the purpose and intent to make a Will, was fully corroborated by each and every witness produced by Contestant. The housekeepers, the neighbors, the adviser and the only relatives, each corroborated the testimony of the other, that, based upon their personal observations of the testator and their close association with him im-

mediately prior to and on August 19, 1959, Michael E. Kehoe did not possess sufficient mental capacity to form the purpose and intent to make a Will.

Michael E. Kehoe resided alone in the family home on Ralph Avenue, in Cincinnati, Ohio, from May 3, 1959, until February 1, 1961, when he was stricken and taken to St. Francis Hospital, Cincinnati, Ohio, where he died on March 1, 1961, at the age of eighty-seven years. He was unmarried and had resided with three maiden sisters for many years. Phoebe B. Kehoe, the last surviving sister, who managed all family business, died on May 3, 1959. The petitioner, Thomas J. Kehoe, a nephew, is the sole heir-at-law of Michael E. Kehoe and the Contestant in this case.

REASONS FOR GRANTING THE WRIT

Unnatural Provisions In Will

The purported will, of a feeble, decrepit and senile man (age 85) who, some 16 months later, died by reason of cerebral arteriosclerosis, compounded by cerebral thrombosis and hemiplegia, which must have existed since long before August 19, 1959 and undoubtedly seriously affected his thinking ability—who was the last survivor of 11 brothers and sisters—most of whose modest estate (some $80,000.00) was inherited down the line successively through three brothers, including his oldest brother, the appellant's father, and later through three older sisters (which facts he had once known, but had probably forgotten about) which was signed by him, obviously with a shakey hand, skipping the letter "a" in his first name, in the presence of the attorney, Charles C. Boyle, who had personally typed such will, with himself and his wife as the only witnesses thereof admitted that he bequeathing only 5

per cent of such estate to his only legal heir (his only nephew, who has been unemployed since 1958 and has been adjudged by two federal agencies as being totally disabled and unemployable), with 5 per cent to his wife, 5 per cent to his only son and 5 per cent to his son's wife, 10 per cent to Father Shaw, 10 per cent to each of two churches for saying masses, and 10 per cent to each of five different institutions of the Roman Catholic Church, is so peculiar and unnatural as to warrant the conclusion that the testator was not then of such sound mind as to be fully aware of the results of such queer, erratic, abnormal, eccentric and unfair provisions and should therefore be declared as null and void, *ab initio.*

A Will containing unjust or unnatural provisions demands close judicial scrutiny, and the proponents have the burden of giving some reasonable explanation of the unequal, or unnatural, provisions of the Will, where they are coupled with suspicious circumstances, as where there is also evidence of weakness of mind on the part of the testator and fraud or undue influence on the part of the devisees, or where the provisions of the Will are grossly unreasonable, and plainly inconsistent with testator's duty to his family.

An inference of undue influence may be drawn from a Will which makes disproportionate gifts to strangers of the blood. Furthermore, a Will which makes an unnatural, unjust or unfair distribution of the testator's estate by unduly benefiting those who have little or no claim by reason of relationship to the testator's bounty, and by excluding in whole or in part those who have a substantial claim by reason of relationship to the testator's bounty, may give rise to a presumption of fraud or undue influence where there is clear proof of the weakened intellect of the testator.

Subtle Undue Influences

Such an unnatural, unjust and discriminatory document, as is this alleged Will, should be conclusively presumed to have been the result of subtle undue influence, induced by the principal preoccupations of the testator during the last years of his life. During this period, his usual practice each morning was to attend early Mass at his Church, proceed to a nearby beer parlor to drink several beers with some of his cronies, then back home for breakfast several hours later and to gaze at the television set most of the day, whether on or off. After supper back to the beer parlor and several more beers before returning home to go to bed. He followed this practice even during the period from 1956 to 1959, when his only remaining sister, Phoebe, was confined to her home preceding her death on May 3, 1959.

On Sunday he varied his program by going with his male friends—members of the St. Vincent DePaul Society—to visit one or two favorite hospitals to pass out candy to patients and then followed by a visit to some nearby beer parlor, to treat himself, his automobile driver and other friends to several beers. "Take him away from the corners and he would die" was a remark by his pastor (who died before the trial) to the appellant, which remark caused the appellant not to interfere with his mode of living.

It is worth noting that the attorney who personally typed the alleged Will specializes in his law practice primarily in handling the legal problems of those who have been referred to him by many of the religious institutions remembered in this instrument. Said attorney, who had himself designated as the Executor in the self-typed alleged Will, was thereby to derive

further monetary benefits therefrom, directly and indirectly, as has been the case in administering the estates of the testator's sisters, Lucy, Alice, and Phoebe (he also prepared the Wills of Alice, and Phoebe but, strangely, not for Lucy) before Michael's death, thereby furnishing motivation and opportunities for subtle, undue influence exercised with such testators.

Several of the proven established facts and circumstances as to the testator and his attorney, as well as Father Shaw, in addition to the distorted terms of the alleged Will, are such as to arouse strong suspicions of subtle undue influence, coupled with the fact that the testator was a religious fanatic, who was evidently much concerned and anxious to assure himself of entrance into Heaven.

Much more positive proof of such subtle undue influence was not available at the time of the trial before the Court of Common Pleas, because of the unfortunate prior deaths of several key witnesses—the owner and bartender of the nearby beer parlor, Mr. Uebel, the testator's own priest, Monsignor Anthony, Pastor of St. Teresa's Church, Cincinnati, Ohio, the appellant's spiritual adviser, Reverend John Madden, Assistant Professor of Sacred Eloquence, Catholic University, Washington, D. C., who had long known the petitioner, and the life-long friend of the Kehoe and Cavanaugh families, Holton Hatterick.

Undue influence can be exerted even though the person complaining was provided for in the will. A belief in any religious creed, if played on by one designing to influence, and thereby influencing, the believer's testamentary disposition of his property, may constitute undue influence. (Section 229, 94, C.J.S.).

It is the general rule in practically all jurisdictions that undue influence is presumed and the burden of proof shifted so as to require the beneficiaries (80 per cent to Church groups) to produce evidence which at least balances that of the Contestant, when, in addition to the confidential relation, there exist suspicious circumstances, such as the fact that the beneficiaries, or persons who benefit by the Will, took part or participated in the preparation or procuring of the Will (Attorney Boyle actually drafted it and assisted in its execution. He and his wife were the witnesses). A presumption of undue influence will arise if it is shown that, in addition to the confidential or fiduciary relation, the testator was dominated, or controlled by the beneficiaries, or that the testator was weakminded or in frail health, particularly susceptible to influence, or that the provisions of the will are unnatural and unjust, or that the persons designated as recipients of benefits thereunder unduly profited by the Will.

Petitioner further points out that the Court of Common Pleas and the jury were deceived into believing that the chart showing the Kehoe family heirship, had been prepared during the previous hearing before the Probate Court as to the Will of Phoebe Kehoe, by Judge, Chase M. Davies, on the basis of information submitted by Michael Kehoe, thereby to establish the excellence of his memory about three months after he executed the purported Will. This deceit was not uncovered until November 18, 1963, the date of filing of the Answer Brief of Proponents, in which, on page 11, it is admitted that:

> "This chart did not come from the files of the Probate Court, . . . but it came from Mr. Boyle's own files."

Presumably, therefore, such chart had probably been prepared by Mr. Boyle some time prior thereto and should not have been admissible to indicate Michael's excellent memory and mental capacity.

The petitioner's interest in the "Constitutional Rights of the Mentally Ill" began long before his admission to practice law, his testimony at the time of the eight-day trial points to the fact that "Phobia" of religion—dogs, cats, water—negroes—alcohol—drugs—and fear of hell and the entrance into Heaven, were almost constantly in the minds of his aunts and Uncle Michael.

(Petitioner's freedom from such phobias was brought about by his having a different outlook on life, and a Mother and Father who provided for a different and broader view of family, home and religious training.)

The testimony will show that the petitioner was always willing and available for any help or assistance he could render other members of the Kehoe family, being solicitous of their welfare, including his only cousin, John G. Fischer, now deceased. Your petitioner's knowledge of the family's financial, physical and mental limitations caused him to exercise as close a supervision as possible of the financial structure of the implied Trust Fund, created by his uncle, James Kehoe.

Petitioner sought and secured what he thought was competent legal assistance, first in Mr. Anthony P. Conlon of Cincinnati, Ohio, who later became ill, and then obtained the services of Mr. John W. Wilke, also of Cincinnati, Ohio and Mr. Warren E. Miller of Washington, D. C. However, since appealing to the Supreme Court of Ohio in January 1964, your peti-

tioner has been forced to go it "alone", with legal assistance as mentioned in my application for extension of time to file this petition.

Before petitioner's Motion for a new trial was overruled by the Common pleas Court of Hamilton County, Ohio, attention was called to irregularities in the administration of Trusts that Defendants-Appellees have incorporated into the corpus of the estate of Michael Kehoe, also known as M. E. Kehoe. This is set forth in my letter to the Honorable Chase M. Davies, Judge of the Probate Court, Hamilton County, Ohio, dated April 3, 1963, which is as follows:

April 3, 1963

The Honorable Chase M. Davies
Judge of the Probate Court
Hamilton County,
Court House,
Cincinnati, Ohio

Re: Thomas J. Kehoe a/k/a Thomas Kehoe
1904 Rockwood Rd., Silver Spring, Md.
Plaintiff

vs.

Charles C. Boyle, Executor of the Last Will and Testament of Michael E. Kehoe a/k/a M. E. Kehoe
601 Schmidt Bldg., Cincinnatti 2, Ohio
(Estate No. 228487)

Dear Judge Davies:

From the revealing and shocking testimony as produced at the trial last week in the above captioned case, I am forced to enter a complaint under Section 2109-50 of the Code of Ohio.

As the heir-at-law and next-of-kin I have found that there was no administration in the estate of Lucy Kehoe, who died in Hamilton County, Ohio

on May 27, [illegible]1 as provided in Section 2101-12 (Par. B). This matter came to my attention from the inventory filed in the Estate of Michael E. Kehoe, No. 228487.

Part of the assets of the estate of Michael E. Kehoe came from the estate of Lucy Kehoe and two other sisters who died after Lucy.

Since Lucy Kehoe had an estate, but no administration, I hereby apply as the only living next-of-kin and nephew, under Section 2109-01 for appointment as Administrator of Lucy Kehoe's estate and will act as Attorney also under Section 2109-03 as I am a member of the Ohio Bar.

Yours very truly,

/s/ THOMAS J. KEHOE
Thomas J. Kehoe

Ohio Code, Section 2109-50: "PROCEEDING WHEN ASSETS CONCEALED OR EMBEZZLED" referred to in my letter of April 3, 1963, to Judge Davis is as follows:

> 2109.50 Proceeding when assets concealed or embezzled.
>
> Upon complaint made to the probate court of the county having jurisdiction of the administration of a trust estate of the county wherein a person resides against whom the complaint is made, by a person interested in such trust estate or by the creditor of a person interested in such trust estate against any person suspected of having concealed, embezzled, or conveyed away or of being or having been in the possession of any moneys, chattels, or choses in action of such estate, said court shall by citation, attachment or warrant, or, if circumstances require it, by warrant or attachment in the first instance, compel the person or persons so suspected to forthwith appear before it to be examined, on oath, touching the matter of the complaint.

Judge Davies replied under date of May 14, 1963, as follows:

PROBATE COURT
HAMILTON COUNTY
CINCINNATI 2, OHIO
CHASE M. DAVIES, JUDGE

May 14, 1963

Mr. Thomas J. Kehoe
1904 Rockwood Road
Silver Spring, Maryland

Dear Mr. Kehoe:

I have delayed answering your letter of April 3, relative to the will contest in the Michael E. Kehoe estate and other matters relating to this estate until I have had an opportunity to examine the records in this court and talk to counsel in the case.

The Probate Court, as you know, under the Ohio law, has nothing to do with contest matters, as jurisdiction in will contest cases is lodged in the Common Pleas Court.

If your aunt, Lucy Kehoe, died a resident of Hamilton County, Ohio, in 1951. leaving property to be administered in this county (as stated in your letter), it would be necessary for some interested person to make an application in this court to administer her estate, or to present her will for probate, in the event she died testate. It would be necessary for such person to come into court and make an application in the books provided for that purpose, as it cannot be done by letter which you, apparently, have attempted to do in your letter of April 3, 1963.

If there is anything further we can do to assist you, please do not hesitate to call upon us.

Sincerely,

/s/ CHASE M. DAVIES
mkc

CHASE M. DAVIES
Probate Judge

CMD/MKC

cc: Mr. Louis A. Ginocchio
Mr. John W. Wilkie

Petitioner contends, in view of all these facts, and circumstances that the Court of Common Pleas was in error in ruling that there was no evidence of undue influence, thus preventing the Jury from giving any consideration as to the suspicious circumstances so indicated.

Your petitioner also strongly contends that the Court of Common Pleas was in error in permitting the submission to the Jury, the letter dated September 19, 1959, addressed to the testator by the appellant and obtained by fraud, and without appellant's permission. Seizure of such private papers was a violation of both Amendment IV and Amendment V of the Constitution of the United States of America.

AMENDMENT IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

and Amendment V of the Constitution of the United States of America:

AMENDMENT V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal

case to be a witnes against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

It will be found that:

(1) Compulsory production of the private papers of the owner (Plaintiff-Appellant) constituted search and seizure within the meaning of the IV Amendment of the Constitution.

(2) In substance such seizure compelled your petitioner to be a witness against himself in the contention of Defendants-Appellees and in violation of Amendment V.

(3) Because it was a violation of the V Amendment, it was also an unreasonable search and seizure under the IV Amendment. 116 U.S. 616

Boyd v. *United States* and *Mapp* v. *Ohio*, 367 U.S. 643.

Evidence of undue influence was wrongfully suppressed by the Court of Common Pleas and was withheld fraudulently through the fraud and conspiracy of the Defendants-Appellees, thus depriving the appellant of the protection of Amendment XIV, Section 1 of the Constitution of the United States of America:

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

It is unquestionably most inconsistent with good public policy for any Church, or group, to be in a position to exercise such subtle influence on any of its adherents as to cause them to disregard normal family obligations and relationships, completely disregarding all natural affiliations with the decedent's only legal heir.

Moreover, such a strange Will, so disproportionately favorable to the various activities of the Roman Catholic Church, and unfavorable to your petitioner, is so utterly inconsistent with good public policy and against public interest as to be void and consequently the estate should be regarded as intestate.

If all testators should display such religious fears, superstitions and fanaticisms, our individual freedom, our private enterprise system and our democratic form of government, would be subverted and become so inoperative as to bring back the feudal system of the Middle Ages.

Finally, your petitioner adverts to the inscription set forth in the Jefferson Memorial, in the City of Washington, D. C., reading as follows:

> "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man".

Jefferson, the author of the Declaration of Independence and the Virginia Statute of Religious Freedom, clearly had in mind, religious tyranny, as well as political tyranny. Every learned person knows the nature of tyranny at which the Statutes of Mortmain were aimed. That tyranny still troubles the world today.

In the opinion of this humble petitioner, this honorable Court has an opportunity now to rectify the grievous injustice done to this petitioner and his family.

This judicial tribunal has but to strike a powerful blow against this most insidious form of tyranny, still rampart in this glorious land of the free and the brave.

CONCLUSION

It is submitted this petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

THOMAS J. KEHOE,
1904 Rookwood Road
Silver Spring, Md. 20910
Attorney for Petitioner.

Of Counsel:

MILLARD W. RICE,
919 Lakeview Drive
Falls Church, Va. 22040

JOSEPH B. MATRE,
1907 Rookwood Road
Silver Spring, Md. 20910

APPENDIX

Mr. Justice Potter Stewart
Associate Justice Supreme Court
of the United States,
Washington, D. C.

Re: Thomas J. Kehoe, also known as Thomas Kehoe,
1904 Rookwood Road,
Silver Spring, Maryland,
Plaintiff-Appellant

vs.

Charles C. Boyle, Executor of the Last Will and Testament of Michael E. Kehoe, also known as M. E. Kehoe, et al.
Defendants-Appellees
Adm. No. 228487
Appeal No. 38626

Application for Extension of Time Within Which to File Petition for Certiorari

1. Court of Common Pleas and Probate Court of Hamilton County, Ohio, whose Judgment and Order was reviewed by the Court of Appeals, First Appellate District, Hamilton County, Ohio and by the Supreme Court of the State of Ohio on June 3, 1964.

(Copy of all Orders please find attached):

2. Judgment and Order signed June 3, 1964.

3. Motion for an Order directing the Court of Appeals for Hamilton County, Ohio to certify its record overruled as was the Appeal, which was dismissed holding that no constitutional question existed.

4. Court of Common Pleas erred in permitting the introduction of certain written documents and letters that were at the time of their introduction objected to and excepted. Failure of the Trial Court and Probate Court

to recognize the existence of a conspiracy to defraud the next of kin. Constitutional questions involving the 1st, 4th, 5th and, perhaps, the 14th amendments of the Constitution will be raised.

Undue influence via Catholic and Church Organizations under Canon 1513, 1514 and 1515.

5. Your petitioner has diligently sought to have a Transcript prepared and as the original trial extended over a period of eight days, the Transcript has never been reviewed by your petitioner. The Attorneys of record, Mr. John W. Wilke of Cincinnati, Ohio and Mr. Warren E. Miller of Washington, D. C., decided on or about January 10, 1964 that they did not have sufficient time to prepare the Appeal to the Supreme Court of Ohio, so with their withdrawal the petitioner prepared the Appeal with the assistance of a member of the Bar of Ohio, an old and true friend of mine, The Honorable Kenneth Mooter, Cincinnati, Ohio, since I was not able to have the help or assistance from members of the Bar in Cincinnati, Ohio, due to the withdrawal from the case of Mr. Wilke and Mr. Miller. Upon returning to Washington I obtained the assistance of my neighbor of more than twenty years, Joseph B. Matre. He is now retired, but is a member of the Bar of Ohio and of the Supreme Court of the United States. Mr. Matre's address is 1907 Rookwood Road, Silver Spring, Maryland. I also sought and obtained the assistance of Mr. Millard W. Rice, 919 Lakeview Drive, Falls Church, Virginia, who is a member of the Bar of the State of Minnesota as well as the Supreme Court of the United States. Since neither of these attorneys have had an opportunity to acquaint themselves fully with the case in view of the delay in forwarding the Transcript and as their help is so vital in the preparation of my Petition for a Writ of Certiorari, it is respectfully requested that they be given the opportunity to review the record when it is received from the Court in Cincinnati, Ohio, and further

the fact that they are both away at this time, it is respectfully requested that an extension of at least sixty days be granted.

Respectfully requested,

THOMAS J. KEHOE
1904 Rookwood Road,
Silver Spring, Maryland.
Petitioner and Attorney for
Plaintiff-Appellant

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

THOMAS J. KEHOE, *Petitioner*,

vs.

CHARLES C. BOYLE, EXECUTOR

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 1, 1964

/s/ WILLIAM J. BRENNAN, JR.
Associate Justice of the
Supreme Court of the
United States.

Date this 24th
day of August, 1964

THE SUPREME COURT OF THE STATE OF OHIO

1964 Term

No. 38626

THE STATE OF OHIO,
CITY OF COLUMBUS.

To wit: June 3, 1964

THOMAS J. KEHOE ETC., *Plaintiff-Appellant*,

vs.

CHARLES C. BOYLE ET AL., *Defendants-Appellees.*

Appeal From the Court of Appeals for Hamilton County

This cause, here on appeal as of right from the Court of Appeals for Hamilton County was heard in the manner prescribed by law and upon motion of the appellee to dismiss such appeal.

On consideration thereof, such appeal is dismissed for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellees recover from the appellant their costs herein expended; that a mandate be sent to the Court of Common Pleas to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Hamilton County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this .... day of ..... 19.....

..... Clerk

..... Deputy

THE SUPREME COURT OF THE STATE OF OHIO

1964 Term

No. 38626

THE STATE OF OHIO,
CITY OF COLUMBUS.

To wit: June 3, 1964

THOMAS J. KEHOE ETC., *Plaintiff-Appellant,*

vs.

CHARLES C. BOYLE ET AL., *Defendants-Appellees.*

Motion for an Order Directing the Court of Appeals for Hamilton County to Certify its Record

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by John W. Wilke

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this .... day of ..... 19....

..... Clerk

..... Deputy

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, NO. 9346

THOMAS J. KEHOE, *Plaintiff-Appellant*

-VS-

CHARLES C. BOYLE, ET AL, *Defendants-Appellees*

Opinion

APPEAL ON QUESTIONS OF LAW FROM COURT OF COMMON PLEAS HAMILTON COUNTY, OHIO

Mr. Warren E. Miller, 810 18th Street, N. W., Washington, D. C., and Mr. John W. Wilke, Cincinnati, Ohio, for Plaintiff-Appellant,

Mr. Louis A. Ginocchio, Cincinnati, Ohio for Defendants-Appellees.

PER CURIAM

An examination of the record discloses no error prejudicial to the rights of Appellant. The judgment of the Court of Common Pleas, Hamilton County, Ohio is, therefore affirmed.

HOVER, P. J., HILDEBRANT and LONG, J. J. CONCUR.

COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

No. 9410

THOMAS J. KEHOE, also known as THOMAS KEHOE,
Plaintiff-Appellant

-vs-

CHARLES C. BOYLE, Executor of the Last Will and Testament of MICHAEL KEHOE, also known as M. E. KEHOE, ET AL, *Defendants-Appellees*

Judgment of Affirmance

This cause came on for hearing upon the appeal on questions of law, assignments of error, bill of exceptions, the transcript and the original papers and pleasings from the Court of Common Pleas of Hamilton County, Ohio, and was argued by Counsel, on consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment prejudicial to the appellant.

It is, therefore, considered by the Court that the judgment of the Court of Common Pleas be, and the same is hereby affirmed, and that the appellees recover from the appellant, their costs herein expended taxed at $ ———.

And the Court being of the opinion that there was reasonable grounds for this appeal, allow no penalty.

It is further ordered that a special mandate be sent to the Common Pleas Court of Hamilton County, Ohio for execution upon this judgment.

To all of which appellant, by his counsel, excepts.

John W. Wilke

Warren E. Miller
Attorneys for Plaintiff-Appellant

Louis A. Ginocchio
Attorney for Defendants-Appellees

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FILED
OCT 17 1964
JOHN F. DAVIS, CLERK

No. 547

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1964

THOMAS J. KEHOE, ALSO KNOWN AS THOMAS KEHOE,

Petitioner,

vs.

CHARLES C. BOYLE, EXECUTOR OF THE LAST WILL AND TESTAMENT OF MICHAEL KEHOE, ALSO KNOWN AS M. E. KEHOE, ET AL.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES INVOLVED

AMENDMENT (IV)

(SEARCHES AND SEIZURES)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT (V)

(RIGHTS OF PERSONS)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT (XIV)

(RIGHTS OF CITIZENS)

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RULES OF COURT INVOLVED

19. Considerations governing review on certiorari. — 1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

STATUTES INVOLVED

1257. State courts—Appeal—Certiorari. — Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. (June 25, 1948, c. 646, Sec. 1, 62 Stat. 929.)

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 547

THOMAS J. KEHOE, ALSO KNOWN AS THOMAS KEHOE,

Petitioner,

vs.

CHARLES C. BOYLE, EXECUTOR OF THE LAST WILL AND TESTAMENT OF MICHAEL E. KEHOE, ALSO KNOWN AS M. E. KEHOE,

REVEREND WILLIAM SHAW

ST. EDWARDS CATHOLIC CEMETERY

ST. TERESA CHURCH

ST. EDWARDS CHURCH

LITTLE SISTERS OF THE POOR ON RIDDLE ROAD

ST. VINCENT DE PAUL CONFERENCE OF ST. TERESA CHURCH

LITTLE SISTERS OF THE POOR ON FLORENCE AVENUE

ROSE KEHOE, ALSO KNOWN AS ROSE PRENTICE KEHOE

LIEUTENANT THOMAS P. KEHOE AKA THOMAS KEHOE, JR.

KATHERINE S. KEHOE, WIFE OF LIEUTENANT THOMAS P. KEHOE, AKA THOMAS KEHOE, JR.

THE UNKNOWN HEIRS, DEVISEES, LEGATEES, EXECUTORS, ADMINISTRATORS AND ASSIGNS OF MICHAEL E. KEHOE ALSO KNOWN AS M. E. KEHOE

KARL J. ALTER, ARCHBISHOP OF CINCINNATI, TRUSTEE, etc.

MOST REVEREND RICHARD ACKERMAN, S.T.D., ROMAN CATHOLIC BISHOP OF THE DIOCESE OF COVINGTON, KENTUCKY, etc.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF THE CASE

Unfortunately, we must take factual issue with many of the allegations contained in contestant's statement of the case. Rather than categorically correct these allegations, we will give to the Court our own statement of the case, which will be a very brief resume of the preponderance of evidence. Record page references apply to the record of the evidence adduced in the trial court, should this Court desire therein to inquire.

The terms and provisions of Mike Kehoe's will were an affirmation and a confirmation of his life-long affections and interests. He divided his estate among nine beneficiaries as follows:

1. The Rev. William Shaw, a relative and close friend 10%
2. St. Edwards Catholic Cemetery, Cynthiana, Kentucky, where he and all but one of his ten brothers and sisters were buried 10%
3. St. Teresa's Church (his Parish Church) for the saying of Masses for the deceased members of the Kehoe family 10%
4. St. Edwards Church, Cynthiana, Kentucky where he and his ten brothers and sisters had been baptized and spent their early years, for the saying of Masses for the deceased members of the Kehoe family 10%
5. St. Teresa's Church (his Parish Church), for the new Church Fund 10%
6. The Little Sisters of the Poor, Riddle Road, Cincinnati, Ohio 10%
7. The Little Sisters of the Poor, Florence Avenue, Cincinnati, Ohio 10%
8. St. Vincent de Paul Conference of St. Teresa's Church, an organization devoted to taking care of the poor of all faiths and creeds ... 10%
9. His nephew, Thomas Kehoe, Thomas's wife, Thomas's son and Thomas's daughter-in-law, to be divided equally among them 20%

The will was a simple and forthright document. The evidence was not only conclusive, but undisputed that he planned and considered carefully the distributions made therein (R. 449, 329, 391).

Mike Kehoe's life was a blueprint of his will. Mike's parents were born in Ireland, immigrated to Cynthiana, Kentucky, where Mike and his ten brothers and sisters were born. Mike outlived all of his brothers and sisters. He was a bachelor. Most of his brothers and sisters did not

marry, and of those that did, only one left issue and that was the contestant, who, except for occasional visits to Cincinnati, had spent his entire life elsewhere. The contestant attended Xavier University, but saw little or nothing of Mike during those years, principally for the reason that contestant resided at the Fenwick or with an Aunt Cavanaugh, and Mike was living out West.

Mike and his entire family were Roman Catholics. Mike went to Mass and Communion every day of his life. The latter years of his life he spent with three maiden sisters, all of whom predeceased him and died in their 80's. Two of these sisters died leaving wills, which were executed at the same time Mike had drawn a prior will. Following the death of the last sister, Phoebe, Mike began working on a new will. Phoebe died in May, 1959 and Mike executed the will in contest on August 19, 1959 (R. 448).

Mike Kehoe had spent his life at one trade, i.e., that of a skilled casket finisher. He had worked all through the war and until five years of his death (R. 395).

Mike enjoyed company all his life. He loved people. No witness ever heard Mike say a bad word about anybody. After his retirement he continued to go to Mass and Communion 7 days a week until the day he sustained his stroke in February, 1961, 28 days prior to his death. After his retirement, his routine not only included going to Mass and Communion, but he continued visiting the sick poor at St. Francis Hospital every Sunday, in addition to making visits to the poor for the St. Vincent de Paul Society of his Parish. After his morning visits to church, where, in order to take Communion, he was required to walk to the Communion Rail, climb up the marble steps and kneel without any support, walk down the steps, and back to the pew, Mike would adjourn to Ubell's Cafe at the corner of Glenway Avenue and Cleves-Warsaw Pike, a

very busy intersection. Mike had to cross this intersection to get to the cafe, recross it on the way home and at no time was Mike ever struck by an automobile, or was he even close to being struck by an automobile, Mike was never known to drink anything stronger than beer, but at Ubell's Cafe he would have a couple of beers, buy his friends beers and sit and chat with them. All of Mike's friends were younger than he. They enjoyed the old man's company and they enjoyed talking with him. They all thought he had an excellent sense of humor and was witty (R. 294, 324, 339, 348, 361, 368, 376, 382).

Mike was not a controversial character, but he was determined and his primary interest in life was the underprivileged and he would go to one or other of the hospital poor wards and he brought the people there candy silver dollars and church bulletins, regardless of their faith or creed. He would collect magazines from his friends and have them bring them to the cafe, so that he would have a lot of them (R. 348, 376, 382, 438).

During his latter years, Mike would work in the yard, even slip roses. He did this up until one month before his death. He would watch television without glasses. In fact, Mike did not wear glasses at all, although many years before he had been fitted with glasses. The optometrist who served him said that Mike seemed to get a second sight and no longer needed the glasses for many years prior to his death (R. 370, 335, 306, 388).

No one ever saw Mike lose his temper. He had an excellent memory. He handled his own business affairs. Employees of the Fifth-Third Union Trust Co. branch office on the corner of Glenway and Cleves-Warsaw Pike testified to his frequent visits to his safe deposit box and his transacting all other banking business, not only for himself but also for his sisters (R. 308, 401, 416).

The evidence disclosed that Mike and his sisters had a room in the basement where they kept bonds and money and other valuables. Without glasses, he could read and manipulate the combination on the safe (R. 89). He never was sick, only had some back trouble from lifting a 100 lb. potato sack (R. 306, 337).

Mike's family had done a great deal to establish the cemetery at Cynthiana, Kentucky and his parents and all of his brothers and sisters, except one, were buried there. Mike himself was buried in Cynthiana, Kentucky. He made frequent visits to see the cemetery and the little church where he and his brothers and sisters were baptized. It was to this church and this cemetery that Mike left 10% each.

Mike was tremendously interested in his Parish church, St. Theresa's Church. He was tremendously interested in the new church that was being built before he died. He remembered the new church to the extent of 10%, as he likewise remembered the church for an additional 10% for the saying of Masses for the repose of the souls of the deceased members of his family.

Mike was tremendously interested in Father Shaw. He was very proud to have a relative that had become a Catholic priest. He saw this relative frequently. He talked about him frequently (R. 324, 438). Mike discussed his last will with Father Shaw several months after it was executed (R. 301).

Mike Kehoe was a man to remember his friends when they were sick and when their relatives died. Up to the time of his stroke he was well aware of the dates when his bonds matured (R. 461). He thought what God had given him should go back to God by way of helping those who could not help themselves. He was on his way to Mass on the snowy morning he suffered his stroke, 28 days before his death (R. 386).

In the light of the foregoing facts, can it be said otherwise than that Mike's will was the true expression of his life's activities and desires?

On cross-examination, the foregoing facts were presented to contestant's expert witness, William L. Roach, M.D., and at p. 258 and 259 of the record, this witness was asked whether or not such a man had the capacity to form the intention and purpose to make a will. His reply at the top of p. 259 was in these words: "Most of that describes a person keenly able to exercise good judgment."

At various times during the trial, on cross examination, petitioner made some very illuminating admissions with reference to the relationship between himself and his deceased uncle. Two examples of these are as follows: "As a matter of fact I would do anything I possible could to keep out of his sight (uncle's) at most times." R-220. (Parenthetical material ours.) On the same page of the record, he likewise admits to the following: "I never did anything for him, and I never did anything against him. I just let him alone."

Petitioner, in his brief, makes certain unpleasant and unsupported accusations against respondents and the Church to which they belong. For the sake of the record and the patience of this Court, respondents are content merely to enter a categorical denial to every one of these charges.

ARGUMENT

Pages 5 to 14 of petitioner's brief, under the heading "Reasons for Granting the Writ" present no material which this Court could entertain under Title 28 of the United States Code, Section 1257, or under its own Rule 19.

Pages 14 through 17 of petitioner's brief present alleged violations of petitioner's rights to protection against unlawful seizure of person or property under the provisions

of Amendments IV and V to the Constitution of the United States, by virtue of the fact that the trial Court admitted into evidence a certain letter dated September 19, 1959, which petitioner wrote and mailed to his decedent uncle, Mike Kehoe, whose will petitioner sought to set aside in the within action.

The above letter was found in the deceased uncle's files by his executor, one of the respondents herein, and was in no way "seized" from petitioner. It was admitted into evidence as a written statement containing admissions against petitioner's interests and claims, an evidentiary procedure common in courts throughout this nation. It is apparent that under no stretch of anyone's imagination could Amendments IV or V have been violated by the introduction of this letter into evidence.

Pages 15, 16 and 17 (the concluding pages of petitioner's "Reasons For Granting The Writ") allege that the petitioner's rights under Amendment XIV of the Constitution of the United States were violated because the jury, the trial and appellate courts found that his deceased uncle freely and voluntarily disposed of his earthly goods in a manner not to petitioner's liking. In other words, petitioner argues that because the jury decided against him and because the State trial and appellate courts confirmed this verdict, he was thereby deprived of property without due process of law Such an argument is not only untenable, but is a non sequitur.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari be denied.

Respectfully submitted,

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Cincinnati, Ohio 45202
Attorney for Respondents.

The names and addresses of counsel of record for petitioner are as follows:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 547

THOMAS J. KEHOE, also known as THOMAS KEHOE,
Petitioner,

v.

CHARLES C. BOYLE, Executor of the Last Will and Testament of MICHAEL KEHOE, also known as M. E. KEHOE, ET AL., *Respondents.*

PETITIONER'S REPLY MEMORANDUM

Having placed confidence in Attorneys, Physicians and members of the Catholic Church, in trying to administer and protect the "Constitutional Rights of the Mentally Ill members of the Kehoe Family", your petitioner can well understand the thoughts that were in the minds of those entrusted to investigate and report on the assassination of President John F. Kennedy.

The transcript of the record of the Common Pleas Court, Hamilton County, Ohio, reveals that:

(1) The Reverend William Shaw, one of the principal beneficiaries under the Will in contest, was

long associated with members of the Kehoe Family (Phoebe, Alice, Lucy and Michael) and that, from the time of the death of Lucy, he received successive substantial gifts and legacies from them;

(2) The Reverend William Shaw had knowledge of the value of the estate left by James E. Kehoe, brother of Michael, for the care and comfort of sick members of the Kehoe Family, having conferred from time to time with Frank Altenau, the Administrator of the estates of Alice and Phoebe Kehoe, whose Wills were also previously prepared by Charles C. Boyle and witnessed by his wife, Alvina Boyle. This action was condoned by the Reverend Father Shaw of the Roman Catholic Church as shown by his testimony at the time of the trial. Father Shaw complied with the Precepts of the Roman Catholic Church as set forth in its Canons #1513, 1514 and 1515, thereby depriving your petitioner of moneys, chattels, heirlooms and personal property that should have rightfully been bequeathed to him. As a matter of fact, many of the heirlooms and personal property had been transferred from my father's house in Cynthiana, Kentucky, after his death and these effects really belonged to the petitioner; and,

(3) The only question presented to the Jury was the mental state of Michael Kehoe, while the question of undue influence was wrongfully taken from the Jury by the Trial Judge.

Fortunately, contestant has this opportunity to point out to this Honorable Court that the respondents' brief has not presented a factual statement for consideration. The Respondents' Brief is a repetition of their opening statement to the jury, as to what they hoped, but failed to prove.

The Respondents' Brief consists of a series of untruths, half-truths and no truths at all. An example of such false and misleading statements is found on page four, lines eight and nine, as follows: *"Mike went to Mass and Communion every day of his life".*

Later, on page four, this statement is qualified, to show that Mike was unable to go to mass and communion, during the last twenty-eight days of his life. Thus, this Honorable Court is led to believe that this man, who was born in Elysville, Kentucky, on January 2nd, 1874, assisted at mass and partook of communion a total of eighty seven years and one day.

It can be corroborated by any Roman Catholic authority, that Michael E. Kehoe did not attend mass and receive communion daily during the first seven years of his life.

It is conceded that Michael E. Kehoe resided in St. Louis, Missouri, and roamed the west prior to his breakdown, about 1911, with painter's colic—which the medical profession now realizes tends to result in mental deterioration. It was around this time that he returned to Cynthiana, Kentucky, to be under the care of the Kehoe brothers and sisters, and Dr. MacDowell, the family physician.

Your petitioner, then around the age of twelve, recalls that thereafter during one summer vacation period, his mother made various food dishes, particularly gruel, for Uncle Mike due to his illness. Your petitioner carried the food prepared by his mother to his Uncle Mike almost every day.

Respondents' Brief in opposition to Petition for Certiorari, on page four beginning on line 4, states "The

contestant attended Xavier University, but saw little or nothing of Mike during those years, principally for the reason that contestant resided at the Fenwick or with an Aunt Cavanaugh, and Mike was living out west".

Contestant attended Xavier University in Cincinnati, Ohio during the 1920-1924 period. During that time, he visited his Uncle Mike on an average of at least once a month. Uncle Mike then lived in Cincinnati with his sisters, Ella and Phoebe, and nephew, John G. Fischer—and not "out West", as so deceptively asserted by the Attorney for the Respondents. It was during this period that the Contestant discussed Uncle Mike's physical and mental condition with Dr. Hoppe, an outstanding Neurologist, as well as with his own Surgeon, Dr. Joseph DeCourcey, both of Cincinnati, Ohio.

Similar false misstatements abound in the Respondents' Brief. Space does not permit a review of these statements at this time. However, we repeat that the real picture of Michael E. Kehoe is not as painted in the pages of the original Bill of Exceptions, where the testimony of the witnesses is recorded and available for review—rather than the picture of him as piously painted in the Respondents' Brief.

One of the questions at issue in this case is whether, on August 19, 1959, the date of the execution of the paper purporting to be the Last Will and Testament of Michael E. Kehoe, also known as M. E. Kehoe, he then possessed sufficient mental capacity to make same or was under any undue influence and was not really able to form the purpose and intent to dispose of his property by Will.

The sad lack of normal mental capacity and understanding on the part of Michael E. Kehoe, at the time of his signature to the alleged will is best manifested by its own very unnatural provisions: (1) it strangely fails to include any reference to the normal disposition of the many antiques, heirlooms and mementoes, as listed in the estate's inventory, most of which had been transferred to the Uncle's home from the home of the contestant's father, after his death (many of which he had previously inherited from his father, which rightfully belonged to the contestant), which should normally and naturally have been turned over to the only living legal heir, for whom such items would naturally possess much more sentimental value, for himself and his heirs, than any intrinsic value or low inventory value for the estate; (2) it bequeathed only 5% to the only surviving legal heir, his nephew—who had long been helpful to, and solicitous of the welfare of, his ailing uncles and aunts—notwithstanding the fact that most of such estate had been inherited down through a chain of prior-deceased Kehoe brothers and sisters, with practically no accretion thereto having been contributed by such last surviving Uncle, so that the natural expectancy, of all concerned, would be that most of it should have been bequeathed to the only surviving legal heir, his nephew, the contestant; (3) its peculiar, propitiating provisions (undoubtedly thought up by scheming attorneys), whereby 5% was thereby to go to such nephew's wife, 5% to his only son and 5% to such son's wife—whose affidavits (Exhibits A, B and C) very positively disavow the contentions in the Respondents' Brief and assert agreement with the contestant's Petition; and (4) it would unfairly give a grossly abnormal 80% of such Kehoe-inherited estate

to eight different Roman Catholic Church institutions, purposes and officials.

No right-thinking, normal-minded Uncle would consciously—without some subtle undue influences—have arranged for such a defective, deficient, abnormal and unnatural will, which therefore ought to be declared as null and void.

Moreover, the witnesses adduced by Petitioner proved by an overwhelming preponderance of evidence that, from May 5, 1959, and including December 29, 1959, Michael E. Kehoe did not possess sufficient mental capacity to form the purpose and intent to make a Will. These witnesses were: (1st) his neighbors, the Glandorfs, who were with him much of the time during this period; (2nd) His former housekeeper and nurse, Anne Rivers, who was employed by the Glandorfs and who saw him almost daily; (3rd) His, and the family's financial adviser, Frank Altenau, who saw him on two occasions during this period at Michael E. Kehoe's specific request, for the purpose of making a new Will, and who saw and stated that Michael E. Kehoe could not have made a Will; (4th) Your petitioner (his only nephew and next of kin) and his Wife, Rose P. Kehoe, who knew him closely through the years, and who spent a great deal of time with him in his household; and (5th) his only Grand Nephew, Thomas Prentis Kehoe, whom Michael E. Kehoe failed to recognize on May 5th, 1959 and May 6th, 1959, at the funeral of his sister Phoebe Kehoe.

The only reference to the date of the will, August 19th, 1959, appears on page 4, line 16 of Respondents' Brief. Although their testimony is widespread, covering a period of forty-five years, the period around Au-

gust 19, 1959—very strangely—escapes their witnesses, with the exception of Charles C. Boyle, Executor. They have shunned it lake a plague.

One other thing escapes them. In all the pages of testimony adduced on behalf of the respondents, not one of their witnesses—with the exception of Charles C. Boyle, Executor (who met him on other business)—encountered even one of the witnesses adduced by the contestant, during the period from May 5, 1959, to December 29, 1959.

It is quite significant that they neither denied nor confirmed their existence. The forgetful housekeeper, Margaret Lampe, for example, never saw the Glandorfs or Anne Rivers, although they were almost daily visitors to the Michael Kehoe home; nor did she encounter Thomas and Rose Kehoe on December 28th and 29th, 1959, even though they resided there with their Uncle. The reason is apparent, namely, Margaret Lampe was discharged by Michael E. Kehoe in May of 1959, and was not thre to observe Michael E. Kehoe. (deposition of Gloria Miller Glandorf page 12.)

Finally, the Attorney for Respondents has deceptively undertaken to represent all of the Respondents listed in his Respondent's Brief in Opposition to Petition for Writ of Certiorari, including Rose Prentis Kehoe (in Petition as Rose Kehoe, also known as Rose Prentice Kehoe), Thomas P. Kehoe, also known as Thomas Kehoe, Jr., and Katherine S. Kehoe. Their affidavits in opposition thereto appear hereinafter as Exhibits A, B and C.

Such presumptuousness gives rise to the question as to whether he may also have been similarly presumptuous in representing the viewpoints of the other re-

spondents, without having consulted with each of them, subsequent to their evaluation, if any, of the statements set forth in the Petition for a Writ of Certiorari, which was mailed to each of them by the Petitioner.

The pious picture of the life and actions of Michael Kehoe, painted by the Attorney for the Respondents in his Brief, is not in accordance with the evidence—as is clearly indicated hereinabove as well as in the records of the trial before the Court of Common Pleas.

The physical, psychological and mental condition of the testator, coupled with his religious fanaticism, provided such easy susceptibility to subtle undue influences as to account for the unnatural provisions of his alleged Will, which is so utterly inconsistent with good public policy, as to require it to be declared as null and void.

Respectfully submitted,

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Attorney for Petitioner.

Of Counsel:

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EXHIBIT A

Re: Thomas J. Kehoe, also known as Thomas Kehoe, Plaintiff-Petitioner

and

Attorney for Plaintiff-Petitioner

vs

Charles C. Boyle, Executor of the Last Will and Testament of Michael Kehoe, also known as M. E. Kehoe, et al, Respondents

Case No. 547

In the Supreme Court of the United States.

Mr. Louis A. Ginocchio, Attorney for the Respondents in the above captioned Case No. 547 in the Supreme Court of the United States, has included my name in the list of Respondents in his "Brief in Opposition to Petition for Certiorari".

Mr. Ginocchio has never had any right to represent me in any way, nor is he now doing so. I disagree with many of the statements in his Brief and agree with all of the statements in the Petition.

At the time the Contest of the Will of Michael Kehoe, also known as M. E. Kehoe, was filed late in August of 1961, I wrote Mr. Robert Jennings, Clerk of the Common Pleas Court, Hamilton County, Cincinnati, Ohio, that I concurred in the suit filed by my husband, Thomas J. Kehoe, also known as Thomas Kehoe, as the nephew and sole heir-at-law of Michael Kehoe, also known as M. E. Kehoe. At that time the Attorneys were John W. Wilke, Esq., Cincinnati, Ohio and Warren E. Miller, Esq., Washington, D. C. They both withdrew from the case in January 1964

and since that time my husband, Thomas J. Kehoe, Plaintiff-Petitioner and Attorney, has represented me.

It is, therefore, requested that my name be removed from the list of Respondents as shown by Mr. Ginocchio.

SEAL /s/ Rose Prentis Kehoe
In "Brief in Petition in Opposition for Certiorari" as Rose Kehoe, also known as Rose Prentice Kehoe.
1904 Rookwood Road,
Silver Spring, Maryland.

Subscribed and sworn to before me this 2nd day of November, A. D. 1964.

/s/ Harriet B. Peckham
Notary Public

EXHIBIT B

Affidavit

State of Georgia
Muscogee County

Now comes Captain Thomas P. Kehoe, also known as Thomas Kehoe, Jr., 171-B Arrowhead Road, Fort Benning, Georgia, and states the following:

Mr. Louis A. Ginocchio, Attorney for the Respondent in the Supreme Court of the United States Case Number 547, has seen fit to add my name to the list of Respondents in the aforementioned case.

At the time of the original Contest of Will I wrote Mr. Robert Jennings, the Clerk of the Common Pleas Court, Hamilton County, Cincinnati, Ohio, advising him that as a beneficiary in the supposed will, I concurred with its contest. This concurrence was based on misgivings as to my great-uncle's sufficient mental capacity to form the purpose and intent to make a will.

Subsequently Mr. Louis A. Ginocchio traveled to Fort Richardson, Alaska, in early 1963 to be present at my deposition made relative to the Contest of Will. From his manner toward me and his actions in repeatedly objecting to my every statement, there was no question in my mind but as to his awareness of my concurrence to the proceedings that had been initiated. Had there been, the tone and substance of my statements during the deposition undoubtedly made my position in contesting the will quite clear to him.

In the proceedings before the Common Pleas Court of Hamilton County, Cincinnati, Ohio, I was initially represented by Mr. John W. Wilke of Cincinnati, Ohio, and by Mr. Warren E. Miller of Washington, D. C. Since January 1964 my interests have been represented by Mr. Thomas J. Kehoe of 1904 Rookwood Road, Silver Spring, Maryland.

FURTHER AFFIANT SAYETH NOT.

/s/ THOMAS P. KEHOE

Sworn to and subscribed before me this 30 day of Oct., 1964. My Commission expires 18 Aug. 65.

/s/ ADDIE B. BOYETT
SEAL *Notary Public*

EXHIBIT C

AFFIDAVIT

STATE OF GEORGIA
MUSCOGEE COUNTY

Now comes Mrs. Katherine S. Kehoe, wife of Captain Thomas P. Kehoe, also known as Thomas Kehoe, Jr., of 171-B Arrowhead Road, Fort Benning, Georgia, and states the following:

Mr. Louis A. Ginocchio, Attorney for the Respondent in the Supreme Court of the United States Case Number 547,

has seen fit to add my name to the list of Respondents in the aforementioned case.

At the time of the original Contest of Will I wrote Mr. Robert Jennings, the Clerk of the Common Pleas Court, Hamilton County, Cincinnati, Ohio, advising him that as a beneficiary in the supposed will I concurred with its contest. This position I still hold today.

In proceedings before the Common Pleas Court of Hamilton County, Cincinnati, Ohio, I was initially represented by Mr. John W. Wilke of Cincinnati, Ohio, and by Mr. Warren E. Miller of Washington, D. C. Since January 1964 my interests have been represented only by Mr. Thomas J. Kehoe of 1904 Rookwood Road, Silver Spring, Maryland.

FURTHER AFFIANT SAYETH NOT.

/s/ KATHERINE S. KEHOE

Sworn to me and subscribed before me this 30 day of Oct. 1964.

My commission expires 18 Aug. 65.

/s/ ADDIE B. BOYETT

SEAL *Notary Public*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 547

THOMAS J. KEHOE, also known as THOMAS KEHOE,
Petitioner,

v.

CHARLES C. BOYLE, Executor of the Last Will and Testament of MICHEL KEHOE, also known as M. E. KEHOE, ET AL., *Respondents*.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

Petition respectfully requests that this Court grant Rehearing of its Order, dated January 18, 1965, wherein Certiorari was denied, and that the Court now grant Certiorari.

The Petition thereto, your petitioner hereby presents the following intervening circumstances and substantial facts and grounds not previously presented:

Letters of Administration were applied for on January 10, 1965, issued January 18, 1965, to William Francis Molony, 435 Commercial Square, Cincinnati, Ohio, for the estate of Lucy Kehoe, (an older sister of Michael E. Kehoe) who died on May 27, 1951, leaving a sizeable estate not heretofore probated, which, your petitioner believes, consisted of:

(a) a partial ownership, amounting to at least $12,000.00, in United States Treasury and Savings Bonds, together with cash deposited in banks in Kentucky and in Ohio, which, through conspiracy, fraud and deceit, turned up in the estate of Michael E. Kehoe; and

(b) an interest amounting to at least $5,000.00 in numerous real estate holdings, as mentioned in the January 28, 1965 report, "To the Legatees of the Estate of Michael E. Kehoe, deceased," by Charles C. Boyle, Attorney, 601-2 Schmidt Building, Cincinnati 2, Ohio.

Your Petitioner contends that, during the course of the pending probate of the Estate of Lucy Kehoe, such facts will be developed and conclusively prove, as will establish that through a combination of circumstances and persons, some unknown to your Petitioner at this time, a conspiracy was effected whereby the rightful and legal heirs were deprived of property which would otherwise have accrued to them.

Your petitioner believes that during the course of the hearings as to the administration of the Estate of

Lucy Kehoe, it will be revealed that as to the disposition of her assets and those of her surviving sisters and brother, there was, behind the scenes, tainted with fraud and deceit, a series of propitiations toward the Roman Catholic Church. This was because of their fears of not getting into Heaven, encouraged by the greed and covetness of certain members of the Roman Catholic Church, with the result that neighbors and friends were apprehensive about testifying as to the mental state of Michael E. Kehoe. during some 15 years preceding his death, which would probably otherwise have been established before the Court of Common Pleas of Cincinnati, Ohio, and thus have vitiated his unnatural purported will, primarily for the benefit of Roman Catholic institutions.

In this connection, your petitioner now recalls, for example, that his attorney in Cincinnati, Ohio, Mr. John Wilke, himself an adherent of the Roman Catholic Church, made a statement to your petitioner, after the petition for contesting the will of Michael E. Kehoe, had been signed by your petitioner—which I then thought was stated jokingly—to the effect that your petitioner would most likely be contacted by the Church before he got back to Washington and would probably be threatened with excommunication; this may well account for the fact that knowledgeable persons were not called as witnesses during the hearings before the Court of Common Pleas, whose testimony would, your petitioner devoutly believes have established the mental incapacity of Michael E. Kehoe to make out his purported will.

Just one example of such subtle influence will, your petitioner believes, be revealed by his next door neighbor of many years, Mrs. Mabel Berger, who, for un-

explained reasons, was not called as a witness, but whose detailed testimony would undoubtedly have convinced the Court of Common Pleas of Michael Kehoe's mental inability to realize the contents of his purported will. Furthermore your Petitioner contends that the claim of this neighbor, Mrs. Mabel Berger, for services rendered the Kehoes at 5039 Ralph Avenue, Cincinnati, Ohio and subsequent settlement reveals the need for constant supervision.

If Michael E. Kehoe, (mentally ill for years, in the opinion of many witnesses and neighbors, and obviously preoccupied with his "Beer Drinking Cronies," as well as in his daily attendance at Mass) was not under undue influence in the execution of his purported will, as your petitioner has contended, then, it is believed, that such further facts would necessarily reveal that he, too, was a part of the conspiracy, whereby such successive estates gradually were given away and finally bequeathed to seven Catholic institutions and to the Reverend William Shaw with substantial benefits "milked off" to their associated attorneys, including those involved in the administration of the estate of Michael E. Kehoe, to the exclusion, almost, of the only legal and natural heir, your petitioner; as well as with complete disregard for the welfare of the petitioner's four grandchildren—the only third generation grandchildren of the 11 Kehoes.

During the course of the hearing of the probate of the Estate of Lucy Kehoe there will be more convincingly revealed the long-time subtle influence of Father William Shaw (an alleged cousin of the 11 Kehoes) and of Charles C. Boyle, (attorney, who drafted the wills of Alice, Phoebe and Michael E. Kehoe, although for some as yet unexplained reason he did not do so

as to the substantial estate of Lucy Kehoe) in channelling the assets of the three Kehoe sisters, Lucy, Alice and Phoebe Kehoe, as well as of the last survivor of the 11 Kehoe brothers and sisters, Michael E. Kehoe, into various Roman Catholic institutions, during their lifetime and in their alleged wills.

Your petitioner recently learned that no tax was ever paid as to the substantial estate of Lucy Kehoe, which probably amounted to more than $20,000.00 and which was probably maneuvered into the successive estates of Alice, Phoebe and Michael Kehoe. It will probably also be brought out that U.S. Treasury and Savings bonds which had been owned by Lucy Kehoe, while she lived in Cynthiana, Kentucky, may have been illegally transferred into Ohio and into the estate of Michael E. Kehoe.

Such hearings will, your petitioner believes, bring out the facts that:

(a) in the spending trust established in 1935 by James Kehoe, for the benefit of his only other nephew, John G. Fischer, it was specified that in the event of the death of said John G. Fischer, the same $23,000.00 trust fund (still intact at the time of the death of John G. Fischer) should be divided among the three sisters and John and Michael E. Kehoe, and further that in the event of their deaths prior to the death of John G. Fischer, any remaining balance should thereafter be turned over to his only remaining nephew, Thomas Kehoe, your petitioner, or in the event of his death, leaving children, then such child or children—thus indicating the desire of the most wealthy of the Kehoe family

that the bulk of his estate should ultimately be turned over to his legal heirs—your petitioner being the only remaining natural and legal heir;

(b) most of the assets acquired financially by Michael E. Kehoe, were acquired originally from the estates of his two brothers, James and John Kehoe, successively through the three sisters, Lucy, Alice and Phoebe, estimated roughly at $80,000.00.

Your petitioner devoutly believes that after the disclosure of all of such intervening circumstances and facts—coupled with the statements in the original petition—the Court will concur with the petitioner's contention that the purported will of Michael E. Kehoe should be declared as null and void.

In view of all of these probabilities and possibilities, for proving conspiracy, fraud, deceit and undue influence, pertaining to Michael E. Kehoe and to his three predeceased sisters and their respective assets and estates, it is respectfully urged by your petitioner that the Court set aside its previous denial for a requested Writ of Certiorari and that it postpone its decision relative thereto, until after the records of the hearings as to the adimnistration of the Estate of Lucy Kehoe shall have been concluded and presented to this Court, and that further proceedings as to the administration of the Estate of Michael E. Kehoe be ordered held in abeyance until the further decision of this Court.

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds for the reasons set forth in this Petition for Rehearing,

as well as in the Petition and Memorandum Reply previously filed, on the basis of which a Rehearing and Certiorari is requested.

Respectfully submitted,

THOMAS J. KEHOE
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1904 Rookwood Road
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Of Counsel:

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